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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 COY COOK, an Individual,
10 Plaintiff,
11 vs.
12 SBEHG LAS VEGAS I, LLC, a Domestic
13 Limited Liability Company, DOES I -X;
14 ROE CORPORATIONS I -X,
15 Defendant.

CASE NO.:

COMPLAINT AND JURY DEMAND

The Plaintiff Coy Cook (“Cook”) by and through his attorney, Jenny L. Foley, Ph.D., Esq. of HKM Employment Attorneys LLP hereby complains and alleges as follows:

JURISDICTION

- 20 1. This is an action for damages brought by Plaintiff for unlawful workplace discrimination
21 based on race, color, and/or sex and for illegal retaliation under Title VII of the Civil
22 Rights Act of 1964 (“Title VII”), 42 U.S.C. §2000e et. seq.; for declaratory and
23 injunctive relief and monetary damages to redress the deprivation of right secured to the
24 Plaintiff by the Civil Rights Act of 1871, 42 U.S.C. § 1981; for violation of Nevada
25 Revised Statute §613.330 et. seq; and for certain claims brought pursuant to the Nevada
26 Revised Statutes as outlined below.
27

- 1 2. This Court has primary jurisdiction over claims set forth herein pursuant to 28 U.S.C. §
2 1331 (federal question), 28 U.S.C. §1343(a) (4) (civil rights action) and 42 U.S.C.
3 §2000e-5(f) (3) (unlawful discrimination and retaliation in employment). Additionally,
4 this Court has supplemental jurisdiction over any state law claims pled herein pursuant
5 to 28 U.S.C. §1367.

6

7 3. All material allegations relative to the named Defendant contained in this Complaint are
8 believed to have occurred in the State of Nevada, Clark County. Therefore, venue
9 properly lies in the southern division of the United States Court for the District of
10 Nevada pursuant to 28 U.S.C. §1391(b)(2).

EXHAUSTION OF ADMINISTRATIVE REMEDY

GENERAL ALLEGATIONS

County under the fictitious firm name SLS Las Vegas Hotel and Casino.

- 2 11. Defendant had over 500 employees at all times relevant to this matter and is therefore
3 subject to the provisions of Title VII.

4 12. Plaintiff worked for Defendant from August 2014 to approximately January 2018.

5 13. At all relevant times, Plaintiff worked as a bartender model at the Lobby Bar also known
6 as the Monkey Bar.

7 14. Plaintiff is an African-American male and thus is a member of a protected group.

8 15. At all relevant times, there were no other African-American bartenders at the Lobby
9 Bar.

10 16. Plaintiff suffered unlawful harassment based on race, color and/or sex and retaliation at
11 the hands of Defendant and of Monique Machua (“**Ms. Machua**”) in particular.

12 17. Ms. Machua is a Hispanic female who, at all relevant times, worked for Defendant as a
13 day shift manager at the Lobby Bar.

HOSTILE WORK ENVIRONMENT

²⁸ ¹ See attached Exhibit 1.

1 employees.

2 22. Ms. Machua told Plaintiff managers no longer enforced the grace period policy.

3 23. However, Ms. Machua continued to implement the grace period policy for all other
4 employees, including Amber Olson and Jonathan Chang.

5 24. Ms. Machua targeted Plaintiff because of his sex, race and/or color and submitted
6 Plaintiff to stricter scrutiny than any other employee. Plaintiff suffered disciplinary
7 actions as a result.

8 25. On or around November 2016, an employee at the Lobby Bar approached Plaintiff in a
9 hostile manner. Plaintiff received a written notice along with the aggressor despite the
10 fact he neither instigated the hostility nor did he engage in it.

11 26. On or around October 2017, Plaintiff forgot to clock in and even though he followed
12 protocol and promptly notified a manager, no one clocked him in. At the end of his
13 shift, Plaintiff requested a manger to clock him out.

14 27. Despite the prompt notice to management and lack of tardiness, Plaintiff was written up
15 for failure to clock in.²

16 28. Plaintiff further experienced increasing hostility throughout the final months of his
17 employment: Plaintiff was written up for not being behind the bar on the hour; for using
18 his phone; for opting out of lunch.

19 29. Upon information and belief, management had not written up any other employee for
20 not being behind the bar on the hour.

21 30. Plaintiff was written up and subsequently suspended for using his phone.³

22 31. Upon information and belief, management had not suspended any other employee,
23 including Manny Ramirez, Amber Olson, and Taylor Rae Duffy, for having their phone
24 out.

25

26

27

² See attached Exhibit 2.

³ See attached Exhibits 3 and 4.

32. Upon information and belief, management had not written up any other employee for opting out of lunch.
33. Defendant, through management, acted toward Plaintiff with an intent to discriminate against him based on his race, color and/or sex and engaged in harassing behavior by overly scrutinizing Plaintiff for farcical reasons and by subjecting Plaintiff to different policies and standards than all other employees.

RETALIATION AND SUBSEQUENT TERMINATION

8 34. Plaintiff informed Human Resources of the discrimination and hostile work
9 environment.

10 35. Plaintiff presented Human Resources with evidence of managers engaging in the very
11 behavior for which Plaintiff was written up: text messages to staff, including Plaintiff,
12 during work hours; names of employees, including dates and times, who opted out of
13 lunch without being written up for it.

14 36. On January 29, 2018, Defendant terminated Plaintiff for violating Article 1401 by
15 opting out of taking a break and by willful insubordination due to submitting the above-
16 listed evidence to Human Resources.

17 37. Ms. Machua made a final attempt to discredit Plaintiff by alleging that he created a
18 heated altercation during the termination meeting and that he used profane language.
19 Witness accounts from Alexandra Hoops and Josh Smith, fellow employees, stand as
20 proof to the contrary.

21 38. Defendant retaliated against Plaintiff for complaining to Human Resources and for
22 submitting evidence of management's hostility and engagement in the very same
23 behavior for which Plaintiff was punished.

24 39. Defendant acted toward Plaintiff with an intent to discriminate against him based on his
25 race (African-American), color (black) and sex (male).

FIRST CAUSE OF ACTION

(Discrimination Based on Race, Color, National Origin, Gender or Age in violation of State and Federal Statutes)

- 1 40. Plaintiff incorporates all of the allegations in the preceding paragraphs as though fully
- 2 set forth herein.
- 3 41. Plaintiff is a member of the class of persons protected by state and federal statutes
- 4 prohibiting discrimination based on race, color, national origin, gender, and age or a
- 5 combination thereof.
- 6 42. Defendant as an employer is subject to Nevada and federal statutes prohibiting
- 7 discrimination, NRS 613.330 et. seq. and Title VII, 42 U.S.C. § 2000e et. seq. as
- 8 amended and thus, has a legal obligation to provide Plaintiff and all employees a
- 9 workplace free of unlawful discrimination.
- 10 43. Defendant refused to take reasonably adequate steps to prevent discrimination against
- 11 Plaintiff in the workplace when managers and/or employees subjected Plaintiff, the
- 12 only male African-American bartender, to disparate terms of employment.
- 13 44. Defendant discriminated against Plaintiff (an African-American Male) when it
- 14 terminated him for opting out of breaks, which was merely a pretext for racial
- 15 discrimination and was also in retaliation for him submitting proof of the disparate
- 16 treatment and racial discrimination to Human Resources.
- 17 45. No other similarly situated persons, not of Plaintiff's protected class were subject to
- 18 such harsh measures for the same or substantially similar conduct.
- 19 46. Plaintiff suffered adverse economic impact due to his unlawful termination including
- 20 but not limited to loss of pay, benefits, expenses and other damages which will be more
- 21 fully described at the time of trial.
- 22 47. Plaintiff was embarrassed, humiliated, angered and discouraged by the discriminatory
- 23 actions taken against him.
- 24 48. Plaintiff suffered compensable emotional and physical harm, including but not limited
- 25 to, headaches, sleeplessness, anxiety and depression resulting from this unlawful
- 26 discrimination by his employer.
- 27 49. Plaintiff is entitled to be fully compensated for his emotional disturbance by being
- 28 forced to endure this discrimination.

1 50. Pursuant to 1991 Amendments to title VII, Plaintiff is entitled to recover punitive
2 damages for Defendant's malicious, intentional repeated violations of federal and state
3 civil rights laws. Discrimination based on race has been illegal since 1964 and an
4 employer of the size, reputation and experience of Defendant should have not engaged
5 in this blatant discrimination.

6 51. Plaintiff suffered damages in an amount deemed sufficient by the jury.

7 || 52. Plaintiff is entitled to an award of reasonable attorney's fees.

11 54. Therefore, Plaintiff is entitled to recover damages for the sake of example, to deter
12 other employers from engaging in such conduct and by way of punishing the Defendant
13 in an amount deemed sufficient by the jury.

SECOND CAUSE OF ACTION

(Retaliation under Federal Law, 42 U.S.C. § 2000e-3 and State Law, NRS 613.340)

16 55. Plaintiff incorporates all of the allegations in the preceding paragraphs as though fully
17 set forth herein.

18 56. In violation of 42 U.S.C § 200e-3, Defendant retaliated against Plaintiff after he
19 complained of acts which he reasonably believed were discriminatory.

20 57. In violation of NRS 613.340 Defendant retaliated against Plaintiff after he complained
21 of acts, which he reasonably believed were discriminatory.

24 59. There may be more detrimental acts of which Plaintiff is unaware which may also
25 constitute retaliation in that it harmed Plaintiff in his workplace.

26 60. The actions and conduct by Defendant constitute illegal retaliation which is prohibited
27 by federal and state statutes.

28 61. Plaintiff suffered damages in an amount deemed sufficient by the jury.

- 1 62. Plaintiff is entitled to an award of reasonable attorney's fees.
 - 2 63. Defendant is guilty of oppression, fraud or malice, express or implied because
 - 3 Defendant knowingly and intentionally retaliated against Ms. Ford because she
 - 4 reported discriminatory behavior.
 - 5 64. Therefore, Plaintiff is entitled to recover damages for the sake of example, to deter
 - 6 other employers from engaging in such conduct and by way of punishing the Defendant
 - 7 in an amount deemed sufficient by the jury.

THIRD CAUSE OF ACTION
(Violation of the Civil Rights Act of 1871, §1981)

- 10 65. Plaintiff incorporates all of the allegations in the preceding paragraphs as though fully
11 set forth herein.

12 66. Plaintiff is African-American and therefore a member of a protected class.

13 67. Defendant engaged in the above-mentioned harassment, discrimination and termination
14 of Plaintiff with the purposeful intent to discriminate against him because of his race
15 (African-American).

16 68. Under similar circumstances, other, White or non-African American employees were
17 not terminated, reprimanded or subjected to a racially hostile working environment.

18 69. Plaintiff was subject to unreasonably stricter standards and policies than any other
19 similarly situated employees and suffered severely stricter punishments, which is *prima*
20 *facie* evidence of purposeful intent to discriminate against Plaintiff because of his race.

21 70. Plaintiff suffered damages in an amount deemed sufficient by the jury.

22 71. Plaintiff is entitled to an award of reasonable attorney's fees in this matter.

23 72. Defendant is guilty of oppression, fraud or malice, express or implied as Defendant
24 knowingly violated Ms. Ford's rights under Section 1981 of the Civil Rights Act of
25 1871.

26 73. Therefore, Plaintiff is entitled to recover damages for the sake of example, to deter other
27 employers from engaging in such conduct and by way of punishing the Defendant in an
28 amount deemed sufficient by the jury.

1 ||| // /

2 || //

FOURTH CAUSE OF ACTION
(42 U.S.C. §1983 Equal Protection)

- 5 74. Plaintiff incorporates all of the allegations in the preceding paragraphs as though fully
6 set forth herein.

7 75. Defendant were acting under color of state law at all times described herein.

8 76. As described herein, Defendant deprived Plaintiff of his right to equal protection by
9 discriminating against him on the basis of hid sex and creating a hostile work
10 environment in violation of the Fourteenth Amendment and 42 U.S.C. § 1983.

11 77. Alternatively, Defendant deprived Plaintiff of his right to equal protection by
12 irrationally and/or arbitrarily subjecting Plaintiff to differential treatment for reasons
13 unrelated to a legitimate governmental objective.

14 78. Plaintiff should be awarded compensatory damages against Defendant for the stress,
15 anxiety, pain, humiliation and trauma he has suffered in an amount to be determined at
16 trial.

17 79. Defendant's conduct was reckless and violated Plaintiff's clearly established
18 constitutionally and statutorily protected employment rights, and therefore Plaintiff
19 should be awarded punitive damages in an amount to be determined at trial.

20 80. Plaintiff should be awarded reasonable attorney's fees and litigation costs and expenses
21 including expert witness fees against Defendants pursuant to 42 U.S.C. 1988.

FIFTH CAUSE OF ACTION
(Negligent Supervision/Retention/Hiring)

- 24
25 81. Plaintiff incorporates all of the allegations in the preceding paragraphs as though fully
26 set forth herein.
27 82. Defendant had an obligation to provide Plaintiff with a workplace free of threat,
harassment, retaliation, deprivation of his civil and constitutional rights, and denigration

1 by his superiors and/or co-workers.

2 83. Defendant ignored Plaintiff's complaint regarding the retaliation and harassment he
3 suffered.

4 84. Defendant knew or should have known of its employees', in particular Ms. Machua's
5 proclivities for improper, unreasonable, outrageous, harassing and retaliatory actions
6 such that an exercise of reasonable care would have stopped and/or prevented such
7 conduct.

8 85. Defendant failed to properly, effectively train its employees that engaging in retaliatory
9 conduct is illegal and improper.

10 86. Defendant failed to ensure that its employees, in particular Ms. Machua's colleagues
11 did not engage in any retaliatory behavior on Ms. Machua's behalf or in retaliation for
12 reporting racial discrimination.

13 87. Defendant's failure to properly hire, supervise and or retain its employees and address
14 their discriminatory and retaliatory conduct in an appropriate manner caused injury to
15 Plaintiff.

16 88. Plaintiff suffered damages in an amount deemed sufficient by the jury.

17 89. Plaintiff is entitled to an award of reasonable attorney's fees in this matter.

18 90. Defendant is guilty of oppression, fraud or malice, express or implied as Defendant
19 knowingly subjected Plaintiff to racial discrimination and retaliation for reporting such
20 discrimination by failing to properly hire, train, or supervise their employees.

21 91. Therefore, Plaintiff is entitled to recover damages for the sake of example, to deter other
22 employers from engaging in such conduct and by way of punishing the Defendant in an
23 amount deemed sufficient by the jury.

24 **WHEREFORE**, Plaintiff prays this court for:

25 a. A jury trial on all appropriate claims;

26 moreover, to enter judgment in favor of the Plaintiff by:

27 b. Awarding Plaintiff an amount sufficient to fully compensate him (including tax
28 consequences) for all economic losses of any kind, and otherwise make him

- 1 whole in accordance with Title VII;
- 2 c. General damages;
- 3 d. Special damages;
- 4 e. An award of compensatory and punitive damages to be determined at trial;
- 5 f. Pre and post-judgment interest;
- 6 g. An award of attorney's fees and costs; and
- 7 h. Any other relief the court deems just and proper.

8 Dated this 22nd Day of August 2018.

9 **HKM EMPLOYMENT ATTORNEYS, LLP**

10 */s/ Jenny L. Foley*
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E-mail: jfoley@hkm.com
Attorney for Plaintiff

EXHIBIT “1”

Employee Action Notice

sbe

Employee Name

Coy Cook

Employee ID #

101687

Job Title & Department

Casino Beverage - Bartender Model

Employee Action Detail

Incident Type

Attendance

Date of Incident

02/26/2017

Employee Action Taken

Final Written Warning

Witness Involved

No

Guest Complaint

No

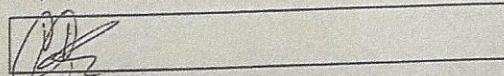
Details

On May 12, 2016 Coy Cook called out sick -1pt
 On June 25, 2016 Coy Cook called out sick - 1pt
 On October 5, 2016 Coy Cook called out sick - 1pt
 On November 26, 2016 Coy Cook clocked in @ 5:01p for 5:00p shift - 0.5pts
 On December 30, 2016 Coy Cook clocked in @ 5:01p for 5:00p shift - 0.5pts
 On December 31, 2016 Coy Cook left early after 2 hours into shift - 0.5pts
 On January 5, 2017 Coy Cook clocked in @ 5:03p for 5:00p shift - 0.5pts
 On January 12, 2017 Coy Cook clocked in @ 5:06p for 5:00p shift - 0.5pts
 On January 26, 2017 Coy Cook clocked in @ 5:03p for 5:00p shift - 0.5pts
 On February 17, 2017 Coy Cook clocked in @ 5:01p for 5:00p shift - 0.5pts
 On February 18, 2017 Coy Cook clocked in @ 5:01p for 5:00p shift - 0.5pts
 On February 24, 2017 Coy Cook clocked in @ 5:02p for 5:00p shift - 0.5pts
 On February 25, 2017 Coy Cook clocked in @ 5:01 for 5:00p shift - 0.5pts
 On February 26, 2017 Coy Cook clocked in @ 12:01p for 12:00p shift - 0.5pts

Coy Cook has accumulated a total of 8.5 points due to attendance. Employee has been notified that further infractions may lead to progressive discipline up to and including termination.

By signing this form, you confirm that you understand the information completed on this form. You also acknowledge that you, your manager or supervisor have discussed the reason for the Employee Action Notice. You acknowledge and understand that further infractions may continue progressive discipline up to and including termination.

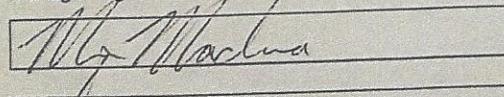
Employee Signature



Date

3/23/17

Manager Signature



Date

3/23/17

Employee Action Notice

Rev. 9.2014

EXHIBIT “2”

Employee Action Notice

SLS®
LAS VEGAS

Employee Name

Coy Cook

Employee ID #

101667

Job Title & Department

Bartender, Casino Beverage- Full Time

Employee Action Detail

Incident Type

Company/Department Policy Violation

Date of Incident

10/21/2017

Employee Action Taken

Final Written Warning

Witness Involved

No

Guest Complaint

No

Details

On 10.21.17 and 10.22.17, Coy neglected to clock himself in at shift start. This is against policy regarding clock in and timekeeping procedures, as all employees are required to accurately record their time by clocking into the Kronos time clock.

This has been reviewed with Coy and it is understood that further infraction to company policy and procedure may result in progressive discipline up to and including termination.

By signing this form, you confirm that you understand the information completed on this form. You also acknowledge that you, your manager or supervisor have discussed the reason for the Employee Action Notice. You acknowledge and understand for further infractions may continue progressive discipline up to and including termination.

Employee Signature

Date



11/2/17

Manager Signature

Date

Witness

Date



11/2/17




EXHIBIT “3”

Employee Action Notice



Employee Name

Coy Cook

Employee ID #

101667

Job Title & Department

Bartender - Monkey Bar

Employee Action Detail

Incident Type

Company/Department Policy Violation

Date of Incident

12/22/2018

Employee Action Taken

Final Written Warning

Witness Involved

Yes

Guest Complaint

No

Details

On 12/22/17, Coy Cook was witnessed utilizing his cell phone and listening to music with his head phones while on the clock inside The Monkey Bar service side station by the shift manager on duty.

The company prohibits the personal use of cell phones during work time or in work areas. This employee action form will serve as a 2nd Final Written Warning due to prior progressive discipline for Company/department policy violation.

Moving forward, it is expected that Coy follows the company's cell phone policy. Any further infractions and/or violations of company policy will result in progressive discipline and can lead to termination.

By signing this form, you confirm that you understand the information completed on this form. You also acknowledge that you, your manager or supervisor have discussed the reason for the Employee Action Notice. You acknowledge and understand that further infractions may continue progressive discipline up to and including termination.

Employee Signature

Date

11/01/18

Manager Signature

Date

Witness

Date

11/01/18

EXHIBIT “4”

Employee Action Notice

SLS®
LAS VEGAS

Employee Name

COY COOK

Employee ID #

101867

Job Title & Department

BARTENDER, MONKEY BAR

Employee Action Detail

Incident Type

Company/Department Policy Violation

Date of Incident

01/10/2018

Employee Action Taken

Termination

Witness Involved

Guest Complaint

Yes

No

Details

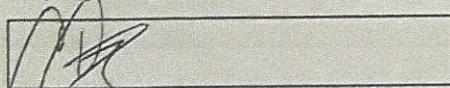
Coy Cook is being terminated effective immediately for violation of Article 14.01 of the CBA, as well as the following standards of conduct:

- Insubordinate behavior
- Failure to follow the policy or procedures contained in the employee handbook

By signing this form, you confirm that you understand the information completed on this form. You also acknowledge that you, your manager or supervisor have discussed the reason for the Employee Action Notice. You acknowledge and understand for further infractions may continue progressive discipline up to and including termination.

Employee Signature

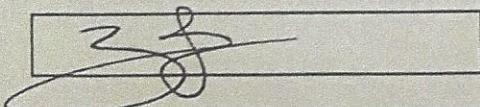
Date



1/21/18

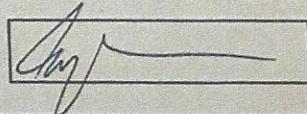
Manager Signature

Date



1/29/18

Witness



Date

1/29/18

Employee Action Notice



Employee Name

Coy Cook

Employee ID #

101667

Job Title & Department

Bartender - Monkey Bar

Employee Action Detail

Incident Type

Suspension Pending Investigation

Date of Incident

01/10/2018

Employee Action Taken

Suspension Pending Investigation

Witness Involved

Yes

Guest Complaint

No

Details

Coy Cook is being Suspended Pending Investigation for Standards of Conduct effective 1.12.18. Human Resources will be contacting Coy within 72 business hours.

By signing this form, you confirm that you understand the information completed on this form. You also acknowledge that you, your manager or supervisor have discussed the reason for the Employee Action Notice. You acknowledge and understand for further infractions may continue progressive discipline up to and including termination.

Employee Signature

Date

1/12/18

Manager Signature

Date

1/12/18

Witness

Date

1/12/18